DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 229-98
13 September 1999

[redacted]

Dear [redacted]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 10 September 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Director, Naval Council of Personnel Boards dated 13 May 1999, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. In addition, it was unable to conclude that your pre-existing hearing defect increased in severity beyond natural progression during your service in the Marine Corps, or that the defect should have been rated by the Department of the Navy. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official

records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure

DEPARTMENT OF THE NAVY
NAVAL COUNCIL OF PERSONNEL BOARDS
BUILDING 36 WASHINGTON NAVY YARD
901 M STREET SE
WASHINGTON, DC 20374-5023

IN REPLY REFER TO
5420
Ser: 99-035
13 May 99

From: Director, Naval Council of Personnel Boards
To: Chairman, Board for Correction of Naval Records

Subj: COMMENTS AND RECOMMENDATION IN THE CASE OF FORMER [redacted]

Ref: (a) BCNR ltr JRE DN: 229-98 of 2 Sep 98
(b) SECNAVINST 1850.4B

1. This responds to reference (a) to show whether or not Petitioner's discharge should be changed to a medical retirement vice discharge with severance pay. **We have determined that the Petitioner's request warrants no change to the Physical Evaluation Board's (PEB) findings.**

2. The Petitioner's case history and medical records have been thoroughly reviewed in accordance with reference (b) and are returned. A detailed discussion of our analysis as well as our recommendation are provided below.

3. Based on the available medical records provided in reference (a), the facts in Petitioner's case are as follows:

a. 12 Sep 1973 MEPS Audiogram

	500	1000	2000	3000	4000	5000	cps
RIGHT	10	10	10	45	35	55	
LEFT	5	5	5	5	5		

b. 20 Dec 1983 "…Right ear deafness x 5 yrs. Audiogram results 500-60,1000-70,2000-60,3000-70, 4000-90, 6000-75…."

c. 7 Jan 1985 F/U for total SNHL A.D. "The patient had essentially normal hearing in 1973…An audiogram in 1978 revealed a moderately severe hearing loss on the right. Currently he has no HX of vertigo…. There is no HX of ear disease or significant head trauma…."

d. 12 October 1984 Audiogram:

	500	1000	2000	4000	cps
RIGHT	90	90	95	85	
LEFT	5	10	10	10	

4. Based on our review and the facts contained in paragraph 3 above, it appears that Petitioner had a significant right-sided hearing loss over the course of his nearly 16 years active duty {progression of an Existed Prior to Service (EPTS) condition as evidenced by his 12 September 1973, MEPS Audiogram}. There is no history of aggravating trauma, nor is it at all clear that his hearing loss ever impaired him to an unfitting degree. The Navy's policy of setting their threshold of unfitness for a hearing loss level is more functionally oriented but, nonetheless, tended to be dependent on the presence of significant impairment bilaterally, with the requirement that hearing loss in the **better** ear be =>35 dB. This was not the case either during Petitioner's active duty or--for that matter--at the time of his subsequent 1986 Department of Veterans Affairs (DVA) evaluation, which found his hearing loss ratable at 10%. Also, the Navy's normal procedure would have been to place Petitioner in a hearing conservation program rather than a 'knee-jerk' referral to the PEB.

5. In summary, Petitioner suffered from a right-sided hearing loss which was present before he enlisted and progressed during his active duty career, but this condition does not appear to have been separately unfitting at the time of his 1986 placement on the Temporary Disability Retired List (TDRL). Indeed, in this instance, perhaps the best evidence that Petitioner's unilateral hearing loss was not unfitting is the absence of impetus to include same in his PEB process at that time, nor did the issue of unfitness enter the picture until well-over a decade post discharge and almost a decade post his 1988 severance from the TDRL.

6. In regards to the discrepancy between the DVA and PEB findings, the fact that a service member's medical condition was not determined to be a physical disability requiring separation

or retirement has nothing to do with the DVA's jurisdiction over a case. In fact it should be noted that, as long as the VA determines a condition (for which the DVA is currently evaluating the veteran) to be service-connected, the DVA can delete, add or change diagnoses made by the Service. The DVA can also increase or decrease the disability percentage rating as the condition worsens or improves. On the other hand, the determination made by the PEB, acting under Title 10 U.S. Code Chapter 61, reflects the member's condition only at the time of the member's separation.

7. The Petitioner's records and documentation support the conclusion that he was properly awarded a disability rating of 20 percent for his medical condition at time of discharge. I find no evidence of prejudice, unfairness, or impropriety in the adjudication of Petitioner's case, and therefore recommend that his petition be denied.

R. S. MELTON